

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

INTRA-MAR SHIPPING CORP.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -3675

Decision No. CU -1100

Counsel for claimant:

Kirlin, Campbell & Keating
by Robert Henri Binder, Esq.

FINAL DECISION

This claim against the Government of Cuba, in the amount of \$12,065.96, was presented by INTRA-MAR SHIPPING CORP. and is based upon the asserted loss of payment for merchandise shipped to Cuba. In its Proposed Decision entered January 31, 1968 the claim was denied in its entirety for failure of proof.

Claimant, through counsel, has now submitted ledger sheets and statements from a Cuban bank.

Based on the entire record the Commission finds that claimant was organized under the laws of the State of New York and that at all times pertinent under the Act 50 per centum of the outstanding capital stock was owned by a national of the United States. The Commission finds that claimant is a national of the United States within the meaning of Section 502(1) of the Act.

The Commission further finds that claimant financed equipment (wash boilers, steam laundry equipment, compressors, motor pumps and burners) for the account of several customers in Cuba. Sight drafts were forwarded through First National City Bank of New York in Havana, Cuba.

In the subject case the Cuban customers paid the charges and said collections were so acknowledged by the said bank to claimant. The dollar reimbursement releases were never granted by the Cuban governmental official.

The total amount due and payable is \$12,065.96.

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter, the Cuban Government effectively precluded not only transfers of funds to creditors abroad, but also payment to creditors within Cuba, by numerous, unreasonable and costly demands upon the customers in Cuba who were thus deterred from complying with the demands of the Cuban Government. The Commission holds that Cuban Law 568 and the Cuban Government's implementation thereof, with respect to the rights of the claimant herein, was not in reality a legitimate exercise of sovereign authority to regulate foreign exchange, but constituted an intervention by the Government of Cuba in the contractual rights of the claimant, which resulted in the taking of American-owned property within the meaning of Section 503(a) of the Act. (See Claim of The Schwarzenbach Huber Company, Claim No. CU-0019, 25 FCSC Semiann. Rep. 58 [July-Dec. 1966]; and Claim of Etna Pozzolana Corporation, Claim No. CU-0049, 1967 FCSC Ann. Rep. 46.)

The Commission finds that claimant's right to receive payment for the aforesaid accounts was lost as a result of the intervention by the Government of Cuba. Claimant has submitted evidence to establish that the subject accounts were payable between October 28, 1959 and February 23, 1960 but asserts that it has not received payment for the outstanding accounts.

The Commission further finds that for the purpose of this decision all the accounts were due and payable on or before March 23, 1960, or 30 days after the date that the last draft was due and payable. The Commission concludes that claimant sustained a loss, within the meaning of the Act, in the amount of \$12,065.96.

The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644) and in the instant case it is so ordered.

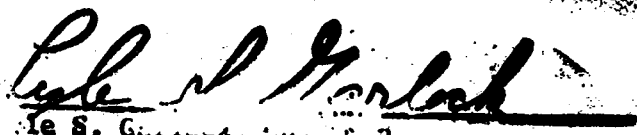
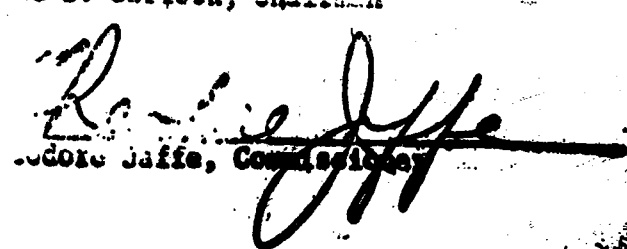
Accordingly, the following Certification of Loss will be entered and the remainder of the Proposed Decision, as amended herein, is affirmed.

CERTIFICATION OF LOSS

The Commission certifies that INTRA-MAR SHIPPING CORP. suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Twelve Thousand Sixty-five Dollars and Ninety-six Cents (\$12,065.96) with interest at 6% per annum from March 23, 1960 to the date of settlement.

Dated at Washington, D. C.,
and entered as the Final
Decision of the Commission

SEPP 1971


Paul S. Garmatz, Chairman

Jacob Jaffe, Commissioner

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

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Counsel for claimant:

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PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$12,065.96, was presented by INTRA-MAR SHIPPING CORP. and is based upon the asserted loss of payment for merchandise shipped to Cuba.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964) 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

Section 502(1) of the Act defines the term "national of the United States" as "(B) a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity."

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

By Commission letter of July 24, 1967, claimant was advised, through counsel, as to the type of evidence proper for submission to establish this claim under the Act.

On August 29, 1967, counsel were invited to submit any evidence available to them within 45 days from that date, and they were informed, that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record.

Finally, by Commission letter of October 24, 1967, counsel were invited to submit any evidence available to them within 30 days from that date, and they were informed, that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record.

However, except for claimant's own letters, no evidence has been submitted.

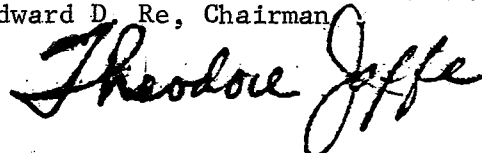
The Commission finds that claimant has not met the burden of proof in that it has failed to establish ownership by a national of the United States of rights and interests in property which was lost as a result of the intervention, nationalization, expropriation or other taking of such property by the Government of Cuba. Thus, the Commission is constrained to deny this claim and it is hereby denied. The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

JAN 31 1968



Edward D. Re, Chairman



Theodore Jaffe, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g) as amended, 32 Fed. Reg. 412-13 (1967).)

CU-3675